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CHARLES ELMORE CROPLEY

No. ~~107~~.

In the Supreme Court of the United States

OCTOBER TERM, 1949

STANDARD OIL COMPANY, PETITIONER

v.

FEDERAL TRADE COMMISSION

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE FEDERAL TRADE COMMISSION

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MEMORANDUM FOR THE FEDERAL TRADE COMMISSION

The first and principal question which the petition presents concerns the proper interpretation of the proviso to Section 2(b) of the Clayton Act, which states that a seller may rebut a prima facie case of price discrimination by showing that his lower price "was made in good faith to meet an equally low price of a competitor." The question presented is whether the proviso makes such a showing an absolute defense to a charge of illegal price discrimination or whether it merely means

that such a showing shall be one of the facts given consideration in determining whether the price discrimination has effects on competition such as to bring it within the prohibitions of Section 2(a) of the Act.

The Government is of the opinion that the foregoing question of federal law has not been settled by this Court, and that it is of general public importance and should be settled by this Court if Section 2(b), as it now stands, remains in effect.

S. 1008, 81st Congress, provides for amending Section 2(b) of the Clayton Act. The bill has passed both branches of Congress and the House has accepted the conference report on the bill. The Senate, however, has postponed until next January further consideration of the conference report. If S. 1008 should become law, the first question presented by the petition in the instant case may become moot.

The Government does not think it necessary to discuss the other questions which the petition presents, inasmuch as the first question is of sufficient importance to warrant review of the case by this Court.

For the foregoing reasons, the Government does not oppose allowance of the petition for certiorari.

PHILIP B. PERLMAN,
Solicitor General.

OCTOBER 1949.

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